

Message Text

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ACTION AF-10

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E.O. 11652: N/A

TAGS: EINV, ZA, EINF

SUBJECT: ZAMBIA'S INDUSTRIAL DEVELOPMENT ACT INTRODUCED

SUMMARY: THE INDUSTRIAL DEVELOPMENT ACT SETTING FORTH REGULATIONS GOVERNING FOREIGN INVESTMENT IN ZAMBIA WAS INTRODUCED IN PARLIAMENT AUGUST 15 AND IS EXPECTED TO BE PASSED SHORTLY. THE ACT ESTABLISHES A LICENSING PROCEDURE, REGULATES TRANSFER OF TECHNOLOGY AGREEMENTS AND PROVIDES QUALIFIED INCENTIVES FOR INDUSTRIES MEETING CERTAIN CRITERIA. THE ACT IS GENERALLY FAVORABLE TO INVESTORS ALTHOUGH THE LANGUAGE IS NOT PRECISE AND LENDS ITSELF TO VARIOUS INTERPRETATIONS. END SUMMARY.

1. THE INDUSTRIAL DEVELOPMENT ACT, WHICH SETS THE GROUND RULES FOR FOREIGN INVESTMENT IN ZAMBIA, HAS BEEN INTRODUCED IN PARLIAMENT AND IS EXPECTED TO PASS LAW ANY DAY. THE ACT WAS VIGORIOUSLY DEBATED DURING THE FIRST AND SECOND READING AND SOME CHANGES ARE EXPECTED BEFORE THE THIRD READING.

2. THE ACT, FIRST ANNOUNCED IN THE JANUARY BUDGET ADDRESS, HAS RECEIVED MIXED REVIEWS AND HAS BEEN INTERPRETED IN LIMITED OFFICIAL USE

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DIFFERENT WAYS. SOME OF THE UNCERTAINTY STEMS FROM THE IMPRECISE LANGUAGE OF THE ACT. SOME HAILED IT AS FURTHERING TO CAUSE OF SOCIALISM AND HUMANISM. OTHERS GREETED IT AS AN OPEN INVITATION TO PRIVATE INVESTMENT. STILL OTHERS COMPLAINED THAT IT DIDN'T GO FAR ENOUGH TO ENCOURAGE FOREIGN INVESTORS.

3. IN GENERAL, THAT ACT IF FAVORABLE TO FOREIGN INVESTORS,

PROVIDES SOME QUALIFIED INCENTIVES, BUT AT THE SAME TIME IMPOSES RESTRICTIONS AND REGULATIONS ON INVESTORS AND THEIR BUSINESS.

4. THE ACT PROVIDES THAT ALL MANUFACTURING IN ZAMBIA MUST BE LICENSED BY THE MINISTER OF INDUSTRY AND SETS FORTH THE APPLICATION AND LICENSING PROCEDURE. BACK BENCHERS OBJECTED TO THE UNCHALLENGEABLE POWER TO PROVE OR DISAPPROVE LICENSE APPLICATIONS VESTED IN THE MINISTRY BR THE ACT, AND THIS SECTION IS EXPECTED TO BE MODIFIED.

5. ANOTHER SECTION OF THE ACT REGULATES AGREEMENT FOR TRANSFER OF TECHNOLOGY AND EXPERTISE. IT REQUIRES TRANSFERORS OF SUCH TECHLOGY AND EXPERTISE TO PROVIDE TECHNICAL TRAINING AND ASSISTANCE AS WELL AS EQUIPMENT AND SPARE PARTS NECESSARY FOR PROPER UTILIZATION OF THE TECHNOLOGY. IT ALSO LIMITS THE DURATION AND AMOUNT OF ROYALTIES PAID FOR THE TECHNOLOGY IN THE EVENT THE TECHNOLOGY BECOMES PUBLIC KNOWLEDGE OR GENERALLY AVAILABLE. THE SAME SECTION PROHIBITS TRANSFER TO TECHNOLOGY AGREEMENTS WHICH INHIBIT COMPETITION, RESTRICT PRODUCTION, SOURCE OF INPUTS OR DESTINATION OF EXPORTS, OR PROVIDES FOR FOREIGN EXCHANGE PAYMENTS WITHOUT PRIOR APPROVAL OF THE BANK OF ZAMBIA.

6. THE LAST MAJOR SECTION OF THE ACT DEALS WITH INCENTIVES AND MAY BE MODIFIED TO SOME EXTENT. THE SECTION ESTABLISHES LIMITED OFFICIAL USE

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CRITERIA FOR "PRIORITY INDUSTRIES" WHICH WOULD QUALIFY AND INDUSTRY FOR INCENTIVES. THE CRITERIA INCLUDE MAXIMUM UTILIZATION OF DOMESTIC RESOURCES, PRODUCTION OF INTERMEDIATE GOODS, CREATION OF PERMANENT EMPLOYMENT, FOSTERING OF DOMESTIC TECHNOLOGY AND INDUSTRIAL SKILLS AND PROMOTION OF INDUSTRIAL DEVELOPMENT IN RURAL AREAS. IF AN INDUSTRY QUALIFIES, IT BECOMES ELIGIBLE FOR REFERENTIAL TREATMENT WITH RESPECT TO GOVERNMENT PURCHASING, PREFERENCE IN THE IMPORT LICENSING PROCEDURE, CUSTOMS DUTY REBATES ON IMPORTED CAPITAL EQUIPMENT, RAW MATERIAL AND INTERMEDIATE GOODS AND SALES AND INCOME TAX RELIEF. EXPORTING INDUSTRIES WOULD QUALIFY FOR SPECIAL TARIFF TREATMENT AS WELL. TAX WRITE OFFS WOULD BE AVAILABLE FOR ENTERPRISES PROVIDING TRAINING FOR ZAMBIIANS. INDUSTRIES ESTABLISHED IN RURAL AREAS WOULD QUALIFY FOR LOANS AND SERVICES FROM THE DEVELOPMENT BANK OF ZAMBIA AND RUCOM INDUSTRIES, A GOVERNMENT RURAL DEVELOPMENT AGENCY.

7. FOREIGN INVESTORS BRINGING IN FOREIGN CAPITAL WOULD HAVE THE FOLLOWING INCENTIVES.

A. A RIGHT TO REMIT, ON CESSATION OF BUSINESS INTEREST,

THE VALUE OF SUCH FOREIGN CAPITAL OR SUCH INVESTMENT, SUBJECT
TO THE LAW RELATING TO EXCHANGE AT THE TIME OF
APPLICATION FOR REMITTANCE;

B. ON MAKING APPLICATION THEREFORE, AN ELECTION TO REMIT
ANY ACCRUED PROFITS OR DIVIDENDS DURING THE TWELVE-MONTH
PERIOD IMMEDIATELY FOLLOWING THE END OF THE FINANCIAL YEAR
TO WHICH THE APPLICATION REFERS, SUBJECT TO ANY LAW RELATING
TO EXCHANGE CONTROL AT THE TIME OF SUCH APPLICATION;

C. ANY REMITTABLE PROFIT WHICH IS
REINVESTED IN ZAMBIA SHALL BE CREDITED TO ANY AMOUNT WHICH
MAY BE REMITTED ON CESSATION OF BUSINESS;

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D. IMMUNITY FROM NATIONALISATION FOR A PERIOD OF TEN YEARS
FROM THE ESTABLISHMENT OF THE ENTERPRISE, UNLESS THE HIGHEST
CONSIDERATION OF PUBLIC INTEREST SO REQUIRE.

8. FULL TEXT OF AMENDED ACT WILL BE POUCHED WHEN AVAILABLE.
COMMENT: THAT ACT INDICATES GRZ ACCEPTANCE OF ROLE FOR PRIVATE
INVESTMENT IN ZAMBIA. HOWEVER, IT IS CLEAR FROM THE
REGULATIONS AND QUALIFIED INCENTIVES THAT THIS ROLE IS TO BE
CAREFULLY MONITORED. IT IS UNLIKELY TO RESULT IN A SUDDEN
SURGE IN FOREIGN INVESTMENT IN ZAMBIA BUT IT MAY SERVE TO INDUCE
INVESTORS TO TAKE A CLOSER LOOK AT OPPORTUNITIES IN ZAMBIA.
END COMMENT.
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